

APPLICANTS:
Thomas and Anne Huber

**REQUEST: Variance to permit a
three-car garage within the required
front yard setback in the AG District**

HEARING DATE: July 20, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5541

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Thomas Huber

CO-APPLICANT: Anne Huber

LOCATION: 4223 Harford Creamery Road, White Hall
Tax Map: 23 / Grid: 3D / Parcel: 65
Fourth (4th) Election District

ZONING: AG / Agricultural

REQUEST: A variance, pursuant to Section 267-34(C), Table II, of the Harford County Code, to permit a garage to maintain a minimum front yard setback of 6 feet (50 feet required) in the AG District.

TESTIMONY AND EVIDENCE OF RECORD:

Co-Applicant Thomas Huber described the subject property as being an approximately 60 acre agriculturally zoned parcel, in agricultural use. Approximately one-half of the property is wooded, and approximately 30 acres are in pasture and hayfields.

The property is improved by a four bedroom, three and a half bath, two story residential structure which was built in the year 2000 in the location of an earlier built structure. Behind the house is located a barn which is accessed by a drive. The barn is used to store machinery. The subject property is also improved by a corn crib and what appears to be two older, accessory structures. These structures are all located to the rear of the home.

The Applicants wish to build a three-car garage to provide them with storage space for vehicles and other miscellaneous household items. The garage would match in appearance that of the existing home, which is traditional in style and appearance.

The garage would be located directly to the left as one enters the Applicants' driveway from Harford Creamery Road. The Applicants describe the property as being flat at that location and large enough to accommodate the proposed garage. The garage itself would be about 36 feet from the center of Harford Creamery Road. Harford Creamery Road is paved, 20 to 25 feet in width with no shoulder. Mr. Huber explained that vegetative screening exists next to Harford Creamery Road which would for the most part screen the garage from passing motorists.

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Mr. Huber explained that his house was built close to the road as the original structure which it replaced was also close to the road. The topography of the property around the house is rolling, and the garage would work best at the location proposed. The proposed location is also the most usable location, accordingly to Mr. Huber. Furthermore, at the location proposed the garage would not intrude into the agricultural use of the property. To the right of the driveway, which Mr. Huber initially considered as an alternative location, the land drops off approximately 10' and as a result grading would be required. Furthermore, neighbors can see the garage at that location and the garage would intrude into the Applicants' hayfields.

Mr. Huber testified that he consulted his immediate neighbors and none has any objection. The file contains letters from a number of individuals who express their lack of opposition to the requested variance.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune explained that the required front yard setback for this agriculturally zoned property is 50 feet. The 50 foot setback begins at a point which is 30 feet from the center line of Harford Creamery Road. Accordingly, the total setback from the center line of Harford Creamery Road is 80 feet. The Applicants are proposing a 44 foot variance to the 50 foot setback which would place the garage approximately 36 feet from the center line of Harford Creamery Road and would impact the required 80 foot setback by approximately 44 feet.

Mr. McClune and the Department feel that the property is not unique. The configuration of the overall 60 acre parcel is generally rectangular. The topography of the property is similar to other parcels in the neighborhood. Several other locations on the parcel would appear to accommodate the proposed garage. Mr. McClune believes that the proposed location of the garage is simply for the convenience of the Applicants and is not related to any unique feature of the property.

Mr. McClune and the Department are also of the opinion that locating the garage to the right of the driveway would not impact the front yard setback requirement and would not impact the hayfields. Perhaps the Applicants would be required to remove a tree, but Mr. McClune believes there exist one or more relatively level spots behind the house in the location of existing outbuildings in which a three-car garage could be located. While the topography would require some grading if the garage were located to the right of the driveway, this would not be a substantial undertaking.

The Staff Report states:

“The Department finds that the subject property is not unique. The topography and the shape are typical for this area of the county. There appears to be several areas where the garage could be placed without requiring substantial grading. There are several buildings located to the rear of the house which are already served by a driveway. This area was graded in the past to accommodate these structures.”

There was no testimony or evidence presented in opposition.

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APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Testimony and photographs in the file, including aerial photograph marked as Attachment 10 and an aerial photograph with topography marked as Attachment 7 to the Staff Report, show the approximately 60 acre subject parcel as roughly rectangular in shape with a significant amount of road frontage on Harford Creamery Road. The improvements, which include an attractive, newly constructed single family home, a relatively large barn, and other outbuildings, are generally grouped in the middle of the property and to the Harford Creamery Road side. A review of Attachment 4, which is a location drawing of the property, shows that the nearest structure to Harford Creamery Road is the existing house. The Applicant proposes to locate the garage as close as 36 feet to the center of Harford Creamery Road, which is significantly closer than any existing structure.

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The Applicant expresses a number of reasons for the requested variance. Among those are that the garage located to the right of the drive, or closer to the existing outbuildings, in a location which would not require a variance, would nevertheless require extensive grading, the garage would impact the farming operation (which appear to be in pasture and hayfields) and would be more visible to neighbors.

These reasons are rejected as grounds for a variance. There is simply nothing unusual about the Applicants' property which would create a hardship or practical difficulty sufficient to justify the granting of the variance. A review of the Staff Report, evidence presented, photographs in the file, and the location drawing lead to the clear conclusion that a garage can be located at other areas on the property without the need for a variance. While, perhaps, some amount of grading would be required if located to the right of the driveway, this is certainly not an unusual undertaking. Many buildings, many garages, many outbuildings, require grading in the construction process. Furthermore, a number of existing outbuildings have already been constructed on the property. There is no obvious reason, nor was a reason suggested by the Applicant, which would preclude another building from being built in approximately the same area as are the other outbuildings.

At its heart, the argument of the Applicants is that it would be more convenient, more user-friendly, for the Applicants and their family if the garage were located directly to the left of the driveway as one enters the property. The convenience of the Applicant cannot be and is not accepted as a ground for the granting of a variance.

CONCLUSION:

For the above reasons it is recommended that the requested variance be denied.

Date: September 12, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 10, 2006.